TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 30

DANTAN GEORGE REA, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 19, 1955

CERTIORARI GRANTED MARCH 7, 1955

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 4974

DANTON GEORGE REA, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

STATEMENT OF POINTS—Filed August 26, 1954

The appellant will rely upon the following points on appeal:

1. The trial court erred in denying appellant's motion for an Order to Show Cause why Narcotics Agent Jack Salter and such other officers and agents of the United States as participated in the violation of the suppression order, should not be held in contempt.

2. The trial court erred in denying appellant's motion for an Order enjoining Narcotics Agent Jack Salter and such other officers and agents of the United States as have physical or legal control in the name of the United States of the suppressed evidence, from transferring said evidence out of the legal custody of the United States and from testifying as to the existence, character, possession of, or facts about, the suppressed evidence.

3. The trial court erred in limiting its order of suppression to use of the illegally obtained evidence in the United States District Court for the District of New Mexico.

McKenna & Sommer, By Joseph A. Sommer.

Filed with Certificate of Service, Aug. 26, 1954.

[fol. 2] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Pleas and Proceedings before the Honorable Waldo H. Rogers, Judge of the United States District Court for the District of New Mexico, presiding in the following entitled and numbered action:

No. 17906 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

DANTAN GEORGE REA, Defendant

INDICTMENT—Filed September 12, 1953

Sec. 2593(a), Title 26, USC. Acquiring marihuana without having paid transfer tax.

The Grand Jury Charges:

On or about the 13th day of August, 1953, at Albuquerque, in the State and District of New Mexico, Dantan George Rea, being then and there a transferee of marihuana did unlawfully acquire and otherwise obtain a quantity of marihuana, to-wit, bulk marihuana, marihuana seeds and marihuana cigarettes, without having paid the transfer tax required by law.

In violation of Title 26, USC, Section 2593(a).

A True Bill:

H. B. Horn, Foreman of the Grand Jury; Paul F. Larrazolo, United States Attorney. In the United States District Court.

Docket Entry of September 28, 1953

At Albuquerque: Judge Hatch presiding in open court. The Government is represented by its attorney, Paul F. Larrazolo, U. S. Attorney. The defendant appears in his [fol. 3] own proper person and accompanied by his attorney, Richard M. Krannawitter. Now with leave of Court

first had and obtained defendant withdraws his former plea of Guilty and enters a plea of Not Guilty to the charge contained in the indictment which plea is received by the Court and ordered entered of record.

In United States District Court

Amended Motion to Quash Search Warrant and to Suppress Evidence—Filed June 16, 1954

The defendant appearing by his attorney, Thomas F. McKenna, appointed by this Court, makes the following amended Motion that a certain purported search warrant, issued by the United States Commissioner Owen J. Mowrey, on August 13, 1953, to Narcotics Agent Jack Salter, be quashed, and that all property seized pursuant to said purported search warrant from defendant's home at 1805 Ridgecrest Drive, SE, Albuquerque, New Mexico, be suppressed as evidence against him in any criminal proceeding including the above entitled action. In support thereof the defendant states as follows:

1. That on August 13, 1953, defendant was the owner of the premises known as 1805 Ridgecrest Drive, SE, said premises being defendant's dwelling place.

2. That on said date Jack Salter, a Narcotics Agent of the Treasury Department of the United States, under authority of a purported search warrant issued by United States Commissioner Owen J. Mowrey, illegally entered said premises and illegally searched the same and illegally seized certain objects described by Jack Salter as marijuana cigarettes, seven paper bags containing a portion of bulk marijuana or marijuana seeds, and five Prince Albert tobacco cans containing portion of bulk marijuana or marijuana seeds, two (2) Chicken Bone pipes, one pair brass knuckles, and one flat green box containing approximately 300 marijuana seeds.

3. That said purported search warrant, and the affidavit upon which it was based, is insufficient on its face.

4. That probable cause did not exist for believing the

[fol. 4] existence of the grounds on which said purported search warrant was issued.

5. That said affidavit was not made by a person purporting to have personal knowledge of the facts sworn to but purports to be based wholly on unsworn statements of others.

6. That the aforesaid search and seizure was without defendant's permission and was in violation of his rights under the Fourth Amendment to the Constitution.

7. For such other and further reasons that may be urged on the hearing of this Motion.

Thomas F. McKenna, Attorney for Defendant.

Filed with Certificate of Service, June 16, 1954.

In United States District Court

Docket Entry of June 18, 1954

At Santa Fe, Judge Rogers presiding in open court. This cause coming on for hearing upon defendant's Amended Motion to Quash Search Warrant and to Suppress Evidence, the Government is represented by James Borland, Esq., Assistant U. S. Attorney and the defendant by his assigned attorney, Thomas F. McKenna, Esquire. After considering copies of the Affidavit for Search Warrant and of the Search Warrant, which were offered and received in evidence by stipulation of counsel, and having heard counsel, the Court found that said Motion to Quash Search Warrant and to Suppress the Evidence is well taken and should be granted and So Ordered. Thereupon the Assistant U. S. Attorney now makes oral motion that the Indictment returned herein be dismissed and the Court being well advised in the premises, So Ordered.

In United States District Court

Judgment of Dismissal—Filed June 18, 1954

This cause being called for hearing upon Defendant's Amended Motion to Quash Search Warrant and to Suppress Evidence, which motion was filed June 16, 1954, the United [fol. 5] States is represented by James Borland, Esquire, Assistant United States Attorney, and the defendant by his attorney, Thomas F. McKenna, Esquire, the Court, having considered said motion and heard counsel, finds that said motion is well taken and should be granted, and the Assistant United States Attorney, having orally moved for dismissal of the Indictment, the Court finds that said motion to dismiss should be sustained and that the said defendant is entitled to be discharged; now therefore,

It Is Considered, Ordered and Adjudged, and It Is the Judgment of the Court, that the Indictment herein, as to the defendant, Dantan George Rea, be, and the same is hereby dismissed; and that the said defendant go hence without day as to the charge contained therein, and that he and his bond, if any, stand discharged.

Done in open Court at Santa Fe, New Mexico, this 18th day of June, A.D. 1954.

Waldo H. Rogers, United States District Judge.

In United States District Court

Motion for an Order to Show Cause and Other Relief—Filed June 21, 1954

Comes Now the defendant, by his attorney, Thomas F. McKenna, assigned by this Court, and moves the Court as follows:

1. That an Order to Show Cause Why He Should Not Be Held In Contempt be issued and served upon Narcotics Agent Jack Salter and such other officers and agents of the United States as have participated in the violation of the Order of this Court suppressing certain evidence

obtained in violation of defendant's constitutional rights, said order being issued June 18, 1954.

2. That an Order issued to, and be served upon, Narcotic Agent Jack Salter and such other officers and agents of the United States who have physical or legal control in the name of the United States of the aforesaid suppressed evidence, forbidding and enjoining him and them from testifying as to the existence, character, possession of, or [fol. 6] facts about; the aforesaid suppressed evidence, and from transferring said evidence out of the legal custody of the United States, and commanding him and them, if said evidence has already been transferred out of the custody of the United States, immediately to reacquire custody and possession in the name of the United States and to destroy the evidence, or transfer it to other agencies of the United States as required by Section 2598(d), Title 26, United States Code.

3. To hold a hearing to determine the existence of the grounds alleged in support of such orders.

4. To issue such further Order as is necessary to protect the defendant's constitutional rights and to enforce the previous Order of this Court suppressing said evidence, and such further Order as the defendant may be entitled to in the premises.

As grounds therefor, defendant alleges as follows:

1. That on June 18, 1954, this Court granted defendant's Motion to Suppress certain evidence for use in any criminal proceeding on the grounds that it was taken by an illegal search and seizure by Narcotic Agent Jack Salter who was at the time acting as an officer and agent of the United States, said search and seizure being in violation of defendant's Constitutional right.

2. At the time said Order was issued, the evidence suppressed was in the legal custody of the United States, and held by the Bureau of Narcotics of the Treasury Department and in the physical custody and control of the officers of said Bureau in their capacity as officers and agents of the United States, and not as individuals.

3. On information and belief, it is alleged that Narcotics Agent Jack Salter learned of, and was informed that this Court had suppressed said evidence.

4. Thereafter, with knowledge of said Order of suppression, and in defiance of said Order, on June 18, 1954, Narcotics Agent Jack Salter made an affidavit before a Justice of the Peace of the State of New Mexico, stating that on August 13, 1953, defendant was in possession of marijuana, and procured the issuance of a warrant of arrest against defendant for possession of marijuana in violation of the [fol. 7] statutes of New Mexico. Defendant was arrested on said warrant and complaint and is held on such charge by the State of New Mexico.

5. The allegation in said affidavit and complaint made by Narcotic Agent Jack Salter is based upon, and acquired solely as the result of the illegal search and seizure referred to, and makes use of said suppressed evidence by means of oral testimony. It is alleged on information and belief that Narcotic Agent Jack Salter intends to, and will if not restrained by this Court, testify further in said criminal proceedings brought by the State of New Mexico to the existence, character, possession of, and facts about, said suppressed evidence, and that he, and/or other officers of the Bureau of Narcotics intend to, and will if not restrained by the Court, illegally surrender possession of said suppressed evidence, now in the custody of the United States, to the prosecuting authorities of the State of New Mexico, or will themselves directly use said suppressed evidence in criminal proceedings brought by the State of New Mexico.

6. Said action by Narcotic Agent Jack Salter, and said threatened action constitutes a violation of the Order of this Court and of the defendant's right not to have evidence, illegally seized by the Federal government, transferred and made available to the State of New Mexico for prosecution, rather than suppressed as ordered by this Court.

7. As to the allegations in paragraphs 2, 4 and 5, they are believed to be true according to information and belief.

Respectfully submitted, Thomas F. McKenna, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

OPINION—Filed July 2, 1954

I have read the Briefs submitted by Defendant and the Government, and feel I am sufficiently advised in the premises to render a Decision herein.

[fol. 8] It is interesting to note that the precise question has never been decided in a United States District Court, so far as reported Decisions are concerned.

I have reached the conclusion that suppression of evidence in a Federal Court, under Rule 41 of the Federal Rules of Criminal Procedure, and the Fourth Amendment to the Constitution of the United States, applies only to proceedings in a United States District Court, and does not govern the use of that evidence in a State Court.

Accordingly, an Order may be presented, denying the relief sought in the pending Motion and Amended Motion.

Waldo H. Rogers, U. S. District Judge.

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR AN ORDER TO SHOW CAUSE AND FOR OTHER RELIEF—Filed July 2, 1954

This matter coming on for hearing on the Amended Motion to Quash Search Warrant and to Suppress Evidence in the above-entitled cause and on Motion that an Order to Show Cause be issued directing Federal Narcotic Agent Jack Salter and such other officials and agents of the United States as might be involved why they should not be held in contempt for failure to obey the orders of this Court, both of the foregoing motions having been filed by counsel for the defendant Danton Rea, and the Court being fully advised in the premises, the Court finds:

That the original Amended Motion to Quash Search Warrant and to Suppress Evidence filed in this Court by the defendant was sustained by this Court on June 18, 1954, only insofar as the Court therein and thereby prohibited the introduction of the evidence thereby obtained by Agent Jack Salter through an illegal federal search warrant in this

Court and had no bearing whatsoever on the use of said evidence in the State Courts of New Mexico, the Court only suppressing the use of said evidence in the United States District Court for the District of New Mexico.

It Is Therefore Ordered that said evidence obtained by Agent Jack Salter through the use of an illegal federal search [fol. 9] warrant is suppressed insofar as its use in the United States District Court for the District of New Mexico is concerned and that such evidence may not be used against the defendant in the United States District Court for the District of New Mexico;

It Is Further Ordered that the motion filed herein on behalf of the defendant Danton Rea asking that this Court find Agent Jack Salter in contempt of the orders of this Court and further asking that the said Agent Jack Salter be forbidden and enjoined from testifying in the State Courts of New Mexico as to the evidence, character, possession of, or facts about any marihuana seized by him in the foregoing cause, and further forbidding him from turning over said marihuana to the State authorities of the State of New Mexico, Be And Is Hereby Denied.

Dated this 2nd day of July, 1954.

Waldo H. Rogers, United States District Judge.

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 12, 1954

Notice is hereby given that Danton Rea, defendant herein, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the Order denying defendant's Motion for an order to show cause and for other relief, said order being entered in the above-entitled action on July 2, 1954.

Name and address of appellant: Danton Rea, 1805 Ridgecrest Drive, S. E. Albuquerque, New Mexico.

Name and address of appellant's attorney: McKenna & Sommer, 302 East Palace Avenue, Santa Fe, New Mexico.

Offense: Violation of Section 2593(a), Title 26, U.S.C.—Acquiring marihuana without having paid transfer tax.

Concise statement of judgment or order, giving date, and any sentence: Order of July 2, 1954, denying defendant's Motion for an order to show cause why Narcotic Agent should not be held in contempt, and for other relief.

[fol. 10] Danton Rea, the above-named appellant, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the above-stated judgment and order.

Dated July 12, 1954.

McKenna & Sommers, by Thomas F. McKenna, Attorneys for Appellant.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 11] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 12] TRANSCRIPT OF HEARING—Filed October 5, 1954

Be It Remembered, that on the 28th day of June, 1954, at 10:05 o'clock A.M., the above entitled cause was heard in Santa Fe, New Mexico, before The Honorable Waldo H. Rogers, U.S. District Judge, the Plaintiff appearing by its attorney, Mr. Paul Larrazolo; the Defendant appearing by his attorneys, Messrs. Thomas F. McKenna, Sr., and Joseph A. Sommer; at which time and place the following proceedings were had:

The Court: Say, on this Rea matter, I don't know how it got in the paper that I have been holding—have something for contempt. I haven't, at all. I don't know who gave it, and I want to find out how that thing emanated.

Mr. Larrazolo: I don't know, Judge. I saw it in the paper, myself.

The Court: There is no angle of contempt possible, unless I ordered, at the time I had in mind, that certain things should be done.

Mr. Larrazolo: The Order is rather silent.

The Court: I haven't signed any Order, all I have done is to call up a Motion.

Mr. McKenna: Judge, I might give a little bit of information on that. I was approached by one of the newspaper reporters, and I gave them a copy of my Motion, but at that time, there was no statement he was going to be held in contempt.

The Court: Who did you give it to?

Mr. McKenna: Mr. Curtis.

The Court: There is no angle of contempt in this thing, this morning. It is limited to whether evidence that was suppressed, here, be used in the State Court.

Mr. Larrazolo: Shall they take the affirmative of the issue?

The Court: Now, let's see, what authorities have you got? I can't spend very long on the thing. Have you a memorandum or anything prepared, Mr. McKenna?

[fol. 13] Mr. McKenna: Yes, I have, Your Honor. I did want to—I don't know how the Court is going to be, for time.

The Court: I haven't any.

Mr. McKenna: I did want to call Mr. Salter, as an adverse witness, to elicit some testimony, so I would be in a position to ask the Court for the proper relief; to get the pertinent facts.

Mr. Larrazolo: I believe we can stipulate. He is about to prosecute for the same offense, in the State Court with the same evidence, isn't that right?

Mr. Salter: Yes, sir.

Mr. McKenna: There are certain things I want to find out about the Complaint—what Mr. Salter did, and where the evidence is, so it can be framed.

Mr. Larrazolo: If the Court please, we will stipulate that the evidence is now in the custody of the Secretary of the Treasury, in Albuquerque. Mr. Salter knows where it is. It is in the custody of the Secretary of the Treasury.

Mr. McKenna: There was some other additional information I wanted to find. Whether or not Mr. Salter had any chemical analysis, any Government chemist was employed by the Government to analyze this testimony, or whether or not he was there by himself, when the employment took

place, and the information and other facts, so again, I can be in a position—(Interrupted)

Mr. Larrazolo: If the Court please, we can stipulate it has been analyzed by a chemist, determined to be marijuana.

Mr. McKenna: Was that evidence turned over to the chemist by yourself?

Mr. Salter: Yes.

Mr. McKenna: You were the only one that was present when that evidence was turned over to the chemist?

Mr. Salter: Yes, I believe I was.

Mr. McKenna: If that is part of the stipulation, that will be all right.

[fol. 14] The Court: Do you want to have your secretary type the memorandum out, today, and have Mr. Larrazolo furnish me with one, Wednesday?

Mr. Larrazolo: If the Court please, may I suggest this, I would like to get a copy of their memorandum, before I submit one.

The Court: That is exactly what I said. It is just what I said; exactly what I said, and I will write an Opinion in Albuquerque, on the thing.

Mr. McKenna: Whatever the Opinion, if you are pressed for time and would rather we submit a memorandum——

The Court: Not only pressed for time. I have none. And you keep it with the Secretary of the Treasury, in the meantime, until I have an Order, one way or another.

Mr. McKenna: Could we have an Order of this Court, so the matter would be held in status quo, Mr. Salter would not, in any manner, give any testimony, and not further participate in any proceedings, until this matter is decided?

The Court: Here is the difficulty, suppose you get Judge Brown, Judge Arledge, or Judge Swope, and they get started, I haven't any control over them.

Mr. McKenna: I believe you have, Your Honor, that is our position.

The Court: I never felt any Federal Court had any control over me, when I was State Judge, and I still have that idea.

Mr. McKenna: Your Honor, the Constitution—(Interrupted).

The Court: I don't care, but just a second, they are in-

dependent folks. The only thing is the use of this evidence. That is the only thing I am restricting it to.

Mr. McKenna: Is there a possibility you will restrict him from testifying?

The Court: No, I am not going to.

Mr. Larrazolo: He would be in contempt.

[fol. 15] The Court: I am not going to confine him.

Mr. McKenna: I think there might be irreparable harm to the defendant.

The Court: He won't have any evidence show up.

Mr. Larrazolo: If the Court please, may I also state this, that our position is that in as much as that evidence is in the custody of the Secretary of the Treasury of the United States, that we have no control, that if he orders it sent to the State Court, I don't know how I can stipulate for him not to do it.

The Court: Well, I will tell you, who is the individual that has those?

Mr. Larrazolo: Mr. Salter is holding it for the Secretary Your Honor. That is his regulations, and he has got to turn that over to whoever the Secretary of the Treasury instructs.

The Court: Well, you better tell the Secretary of the Treasury to be careful. I don't want that Secretary of the Treasury turning it over to the State Court, until I decide this.

Mr. Larrazolo: I might state that the Secretary of the Treasury is not a party to this.

The Court: No, let's tell him I want that to stay there, but I have no control over State Courts. Get in your memorandum, there, and then we will be able to decide it.

Mr. McKenna: May I make one further remark? The record will show, in view of the possible irreparable harm to my client, during this interim, I respectfully wish to except to the Court's refusal to give us the complete relief of that nature.

The Court: Sure, sure, you called it to my attention. You called it to my attention. No, you tell that fellow, the Secretary of the Treasury, to keep that here for a while. We haven't any term of Court until fall, anyway. In the State Court. Third Monday is the beginning of the term, there. Let's take things easy. We are making too much

[fols. 16-19] out of this case. When I get around to it, I will decide it. Everybody understand what I mean? I don't want anybody fooling around, here, somebody will get burned. All right.

(Whereupon, at 10:12 o'clock A.M., June 28th, 1954, Court was recessed.)

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—November 18, 1954 (Omitted in Printing)

[fol. 21] IN UNITED STATES COURT OF APPEALS, TENTH CIRCUIT, NOVEMBER TERM, 1954

No. 4974

DANTAN GEORGE REA, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the District of New Mexico

OPINION—December 23, 1954

Joseph A. Sommer (Thomas F. McKenna was with him on the brief) for Appellant;

James A. Borland, Ass't United States Attorney (Paul F. Larrazolo, United States Attorney, was with him on the brief) for Appellee.

Before Huxman, Murrah and Pickett, United States Circuit Judges.

HUXMAN, Circuit Judge:

An indictment was filed against appellant, Dantan George Rea, in the United States District Court for the District of New Mexico, charging him with unlawfully acquiring

marihuana without having paid the transfer tax required by law, in violation of 26 U.S.C.A. § 2593 (a). The evidence upon which the prosecution was predicated was obtained as the result of an illegal search pursuant to a void [fol. 22] search warrant. After a plea of not guilty, appellant moved that the search warrant issued and all property seized pursuant thereto be suppressed as evidence against him "in any criminal proceeding including the above entitled action." The trial court suppressed the evidence with the result that the district attorney, being deprived of the use of his evidence, at the same time moved for a dismissal of the action. Such an order was entered by the court. Thereafter, on August 13, 1953, Narcotics Agent Salter swore to a complaint before a Justice of the Peace of New Mexico, stating that appellant was in possession of marihuana, in violation of Section 71-636 N.M.S.A., 1941, Compiled. Appellant was arrested on the warrant and complaint issued and he is now awaiting trial in the State Court of New Mexico. The case against him there is presumably predicated on the testimony of Narcotics Agent Salter and the evidence seized by him.

On June 21, 1954, appellant filed a motion in the federal court for a contempt show cause order to be issued against Salter, to show cause why he should not be held in contempt of court and to enjoin him from testifying in the state court action with respect to the narcotics obtained by him as a result of his illegal search, and that if such evidence had been already transferred out of the custody of the United States to direct him to immediately reacquire custody and possession in the name of the United States, and to destroy the evidence or transfer it to other agents of the United States. The grounds of this motion were that the evidence had been illegally obtained and that the federal court should enjoin its use in the state tribunal. The trial court upon hearing and briefs submitted entered an order denying the relief sought on the ground that the suppression of evidence in a federal court under Rule 41 of the Federal Rules of Criminal Procedure and the Fourth Amendment to the Constitution of the United States applies only to proceedings in United States Courts and does [fol. 23] not govern the use of that evidence in a state

court. This appeal challenges the correctness of that ruling.

By his original motion appellant sought two things: first, the suppression of the evidence and the order of the court denying its use as evidence in any prosecution against him and, second, the order of the court directing the disposal of the property in question. The court entered an order suppressing the evidence but made no order with respect to the seized property.

Rule 41 (e) of the Federal Rules of Criminal Procedure empowers the court to suppress evidence obtained in violation of one's rights under the Fourth Amendment to the Constitution and to order its return, if it is of such a nature that it can be lawfully returned. This, being marijuana, was contraband and could not be lawfully returned to appellant. When Rea obtained an order suppressing the use of the marijuana as evidence against him and the district attorney dismissed the charge, the case against him came to an end. At that point there was nothing pending against him in any court. What he sought thereafter when the state case was filed against him was an order of the district court, enjoining Salter from testifying in the state action, and a further order with respect to the disposition of the evidence which in effect would enjoin its production as evidence in the state court.

The receipt of evidence in trials in federal courts, resulting from unlawful searches and seizures by federal officers or agents, is not a violation of right guaranteed by the Fourth Amendment. The invasion of the right to sanctity and privacy of the home is complete when the unlawful search and seizure is consummated. The legal penalties which flow from such violation and which may be inflicted then become absolute, and denying the right to receive evidence thus obtained thereafter in a trial in the federal court is no part of such penalties, either under the [fol. 24] Fourth Amendment or under any law of Congress. Congress no doubt could pass a law prohibiting the use of such evidence in federal courts but this it has not done. In the absence of such a statute, the denial of the right to use the same flows from a rule of evidence fashioned by the

federal courts.[1] The rule is well stated in Shinyu Nora v. United States, 148 F. (2d) 696, as follows: "Neither the Constitution nor any statute in terms prohibits the use of the truth, even though unlawfully discovered, as evidence in the prosecution of a crime; but it is a federal judicial policy not to allow the agents and officers of the United States to break the law themselves and then use information so acquired to prosecute others."

The prohibition against the use of such evidence is limited to trials in the federal courts and there only when it was unlawfully obtained by federal officers or agents. It has consistently been held that evidence obtained by state officers in violation of the Fourth Amendment may be received in trials in federal courts[2] and that evidence unlawfully obtained by federal officers may be used in state trials, when not in contravention of state law.[3]

We cannot agree that the relief sought is merely incidental to the order of suppression. While the motion for suppression sought the suppression of the evidence "in any criminal proceeding including the above entitled action," we think it must be construed as being limited to actions by the federal government in federal courts. That is the interpretation placed upon the order of suppression [fol. 25] by the judge who entered it, when in denying relief under this motion he stated that the motion to suppress was sustained "only insofar as the Court therein and thereby prohibited the introduction of the evidence thereby obtained by Agent Jack Salter through an illegal federal search warrant in this court and *had no bearing whatso-*

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[1] Weeks v. United States, 232 U. S. 283;
Wolf v. Colorado, 338 U. S. 25, and cases there cited.

[2] Byars v. United States, 273 U. S. 28;
Taylor v. Hudspeth, 113 F. (2d) 825;
United States v. Butler (10th Cir), 156 F. (2d) 897;
Jaroshuk v. United States, 201 F. (2d) 52;
Rettich v. United States, 84 F. (2d) 118.

[3] Terrano v. State (Nevada), 91 P. (2d) 67;
State v. Gardner (Montana), 249 P. 574;
Com. v. Colpo, 98 Pa. Superior Ct., 460, Cert. Denied, 282 U. S. 863.

ever on the use of said evidence in the State Courts of New Mexico, the Court only suppressing the use of said evidence in the United States District Court for the District of New Mexico."

Whether evidence unlawfully obtained by federal officers or agents in violation of the Fourth Amendment is admissible in state criminal trials depends upon the state constitution, state statutes, decisions by its courts, or state rules of evidence. If not prohibited by one of these, its receipt in evidence does not violate any right guaranteed the accused by the federal Constitution, its laws, decisions of its courts, or its rules of evidence. But assuming without so deciding that the district court under its general equity power had the authority to provide for the destruction of this evidence for the admitted purpose of preventing its use by the state and the power to enjoin Salter from testifying in the state action, if subpoenaed therein, we are of the view that it should not have done so.

While the facts in Stefanelli v. Minard, 342 U.S. 117, differ slightly from the facts before us in that there the plaintiff sought an injunction enjoining state officers from using evidence in a state prosecution which had been obtained in violation of the Federal Civil Rights Act, while here the evidence was obtained by a federal officer in violation of the Fourth Amendment, we think the reasoning of that case has force and applicability here. The court concluded that even if the power to enjoin the state officers might fairly and constitutionally be derived from the generality of language of the Act, to grant the relief would disregard the power of courts of equity to exercise discretion, when in the exercise of such discretion the bal-[fol. 26] ance is against the wisdom of using it. The court alluded to the delicate balance between state and federal judicial systems and how great care and discretion was necessary to preserve harmonious relationships between the two systems. The court reaffirmed the principle that "federal courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure." Say what you will, the effect of the relief sought would make impossible the prosecution by the state of its action against apellant. That is the purpose and the only

purpose sought to be accomplished by this proceeding and such an order would constitute an interference with the state judicial process.

Again assuming without deciding that the use of the void warrant and the evidence seized thereunder would violate some federal constitutional right of appellant, denying him the relief which he seeks would not leave him without remedy. He could urge that, as he should, in the state trial [4] and, if denied relief there, could then appeal to the Supreme Court.

The quotation from the opinion in Silverthorne Lumber Company v. United States, 251 U.S. 385, that "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court *but that it shall not be used at all*" does not support appellant's theory. In that case documents were unlawfully seized. They were photostated and the originals were then returned by order of the court and the Government sought to use the photostatic copies and what the opinion means is that the Government could not use that evidence in any way.

Affirmed.

[fol. 27] In United States Court of Appeals for the Tenth Circuit

Judgment—December 23, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the District of New Mexico and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said district court in this cause of July 2, 1954, denying motion to show cause be and the same is hereby affirmed.

[fol. 28] Clerk's Certificate to foregoing transcript omitted in printing.

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[4] See Douglas v. Jeanette, 319 U. S. 157.

[fols. 29-30] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 555

DANTAN GEORGE REA, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed March 7, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2153-5)